Department of Energy



Bonneville Power Administration P.O. Box 3621 Portland, Oregon 97208-3621

CORPORATE

April 22, 2005

In reply refer to: KDP-7

Columbia Research Corporation Mr. Dan Seligman 209 W. Evergreen Blvd., Suite 605 Vancouver, Washington 98660 (360) 695-7422

RE: FOIA Request #05-033

Dear Mr. Seligman:

Thank you for your fax letter of April 18, 2005 requesting information under the Freedom of Information Act. In your letter you request copies of all "final actions" taken by the Bonneville Power Administration between January 1, 2005 and March 31, 2005 except for:

- 1. Records of Decision posted on BPA's web site;
- 2. Contracts less than one year in duration;
- 3. Contracts signed for Transfer Service; and
- 4. Correspondence between BPA's account executives and customers that do not constitute a final determination of legal rights.

Our office received your faxed request on April 19, 2005 and has designated it as FOIA #05-033. In your request, you agreed to pay costs up to \$100.

BPA is unable to conduct a reasonable search based on your request because the request does not specifically describe the particular records sought. In addition, it does it define what is meant by the term "final action," which is a legal conclusion that would somehow have be applied by BPA to a wide variety of documents to determine if a particular document falls within the range of your request. Therefore, your request does not allow BPA's staff to reasonably ascertain exactly which records are being requested.

As described, your request could potentially apply to an inordinately broad range of documents within the agency between the dates of January 1, 2005 and March 31, 2005. 10 CFR 1004.4(b) requires that the records must be reasonably described, including where possible, specific information such as dates, titles, file designations and other information which may help identify the records. Categorical requests, such as this one, must be specific enough to enable BPA to

identify and locate the records requested by a process that is not unreasonably burdensome or disruptive of BPA's operations. 10 CFR 1004.4(c).

For the above reasons, we have not appointed an authorizing official, nor started the FOIA search and review process.

At this time, we are providing you an opportunity to be more specific in the scope, to specify clearly the subject matter requested, or to define what you mean by "final action" for this FOIA request. You may also contact this office for assistance in reformulating your request. 10 CFR 1004.4(c)(2). We ask that you resubmit your request as well as provide agreement to pay fees associated with fulfilling your request by May 13, 2005, or we will consider your request withdrawn.

Upon hearing from you, in writing, about a clarification of your request, if you would like an estimate of fees before proceeding, we will attempt to provide one to you. We will await your response. In the meantime, if you have any questions, you may contact me at mail stop KDP-7 or at 503-230-5110.

Sincerely,

Annie Eissler Freedom of Information Officer P.O. Box 99249 • Seattle, Washington 98139 • Phone (206) 493-2320 • email: seligman48@seanet.com

May 2, 2005

Ms. Annie Eissler, Freedom of Information Act Officer Routing: KDP-7 Bonneville Power Administration P.O. Box 3621 Portland, Oregon 97208

SUBJECT: FOIA Request #05-033

Dear Ms. Eissler:

The purpose of this letter is to respond to your letter of April 22, 2005, which states that the Bonneville Power Administration is unable to produce copies of final actions taken in the last three months because my letter does not define what is meant by the term "final action."

The Northwest Power Act requires parties challenging a final BPA action, or the implementation of a final BPA action, to file suits in the U.S. Court of Appeals for the Ninth Circuit "within 90 days of the time such action or decision is deemed final...". 16 U.S.C. § 839f(e)(5). The term "final action" has been interpreted in several Ninth Circuit decisions, including *Puget Sound Energy v. U.S.*, 310 F.3d 613 (9th Cir. 2002).

The purpose of my original FOIA request – which I am renewing in this letter – is to obtain a copy of all actions or decisions between January 1, 2005 and March 31, 2005, which BPA has deemed final for purposes of this section of the Northwest Power Act. (The four exceptions noted in my April 22, 2005 letter remain in effect – I don't need those documents.)

Simply put, if BPA has taken any action starting the "90-day clock" in that period, I want a copy of the action document (whether written or electronic).

I am willing to pay copy and search charges not to exceed \$100. Please call me before proceeding if the charges exceed that amount.

Sincerely,

Dan Seligman
Attorney at Law